

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Pagtakhan Marlon E.
 (Last) (First) (Initial)

Prisoner Number ID #1079584

Institutional Address 300 Bradford St. Redwood City, Ca. 94063

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

Marlon Estacio Pagtakhan

(Enter the full name of plaintiff in this action.)

vs.

Sheriff Don Horsley

(Enter the full name of respondent(s) or jailor in this action)

Case No. _____
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

SI

(PR)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

San Mateo County Superior Court, Redwood City

Court

Location

- (b) Case number, if known MH463328A (?)

- (c) Date and terms of sentence 11/16/07 "min. 180 days (pending trial)"

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No

Where? County Jail (pending "illegal transfer" to Alameda State Hospital)

Name of Institution: Maguire Correctional Facility

Address: 300 Bradford St. Redwood City, Ca. 94063

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

I am pending trial on multiple counts of 646.9(a) and 422 (Framed, I sought a speedy trial) and was fraudulently diagnosed incompetent and will be sent for treatment.
(maltreatment)

3. Did you have any of the following?

Arraignment: Yes X No

Preliminary Hearing: Yes No X

Motion to Suppress: Yes No n/a

4. How did you plead?

Guilty Not Guilty X Nolo Contendere

Any other plea (specify)

5. If you went to trial, what kind of trial did you have? n/a

Jury Judge alone Judge alone on a transcript

6. Did you testify at your trial? n/a Yes No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing n/a Yes No

(c) Time of plea n/a Yes No

(d) Trial n/a Yes No

(e) Sentencing n/a Yes No

(f) Appeal n/a Yes No

(g) Other post-conviction proceeding n/a Yes No

8. Did you appeal your conviction? n/a Yes No

(a) If you did, to what court(s) did you appeal? n/a

Court of Appeal Yes No

Year: Result:

Supreme Court of California Yes No

Year: Result:

Any other court Yes No

Year: Result:

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? n/a Yes _____ No _____

(c) Was there an opinion? n/a Yes _____ No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)? n/a

Yes _____ No _____

If you did, give the name of the court and the result:

n/a

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? n/a Yes _____ No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: San Mateo County Superior Court

Type of Proceeding: 10/24/07 "suspended" PBE preliminary

Grounds raised (Be brief but specific):

a. court appointed counsel's misrepresentation/misprision

b. Dr. Singh's fraudulent competency report

c. Dr. Samuel's fraudulent competency report

d. fraud on the court, "I am very competent."

Result: futile (not trial set) Date of Result: 10/24/07

II. Name of Court: San Mateo County Superior Court

Type of Proceeding: 11/16/07 "suspended" PBE preliminary

Grounds raised (Be brief but specific):

- a. I dispute fraudulent results and misrepresentation.
 b. "I claim Constitutional violations" and dispute transfer.
 c. I request a Marsden and public state hearing, before transfer.
 d. Originally seeking a speedy trial, I invoke my right to trial.
 (sentenced to a minimum of 180)
 Result: day treatment pending trial. Date of Result: 11/16/07

III. Name of Court: n/a

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

IV. Name of Court: n/a

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No X

Name and location of court: n/a

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

need more space. Answer the same questions for each claim. (PLEASE PARDON MINOR MISTAKES)

[Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

* Claim One: The Burlingame Police Department displayed gross negligence and prejudice in their investigation and denied me my 14th Amendment right to "...equal protection of the laws".

Supporting Facts: The assigned investigator solicited with the alleged victims committing entrapment and created a fraudulent report, disregarding the defendant's own initial victimization. (Please see pages 30 through 34 in the attached 59 page document numbered 0-56)

* Claim Two: Court appointed counsel Eric M. Howe conspires with deputy D.A. on 8/23/07 to violate my 6th Amendment right to a speedy trial.

Supporting Facts: The night before the court date I meet him for the first time. He asks repeatedly that I waive time, I insist and let him know I want a speedy trial. He agrees after the short meeting. The next day he problems doubt and suspends proceedings. (see attached pages 26, 40, 46, 47, 51, 52, 54)

* Claim Three: Court appointed staff (counsel & doctors) violated my 5th Amendment right to liberty and due process, misrepresenting me and drafting fraudulent evaluation reports.

Supporting Facts: I will now be illegally sent to a State Hospital for 180 days minimum for maltreatment till I regain competency. I am competent! This was deliberate moral turpitude because I would not waive time. (see attachment)

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

I'm being denied competent counsel and haven't had the chance to address the first two claims. I'm being railroaded in a malicious prosecution and suspect "on obvious cover-up as I'm being denied discovery materials." (please see attachment)

1 *Claim Four: The investigating officer of the Burlingame Police
2 Department violated my 4th Amendment right.

3 Supporting Facts: There was no warrant for him seizing
4 two computers from my home. I gave him permission to
5 printout exonerating material after a coerced inter-
6 rogation after refusing to speak more without a lawyer.
7 (see attached pages 6, 11, 30 & 31 lines 47-78) (two replica/
8 model weapons were seized some days later)

9 *Claim Five: My 5th Amendment right was violated when the
10 investigating officer compelled me for an interview.

11 Supporting Facts: He gave me the impression that he
12 would conduct a thorough investigation to learn both
13 sides of the story (see attached pages 31 lines 78-96)
14 The officer ignored the crimes committed against the
15 defendant. (equal protection, 14th Amendment)

16 *Claim Six: Amendment 6 "excessive bail shall not
17 be required" was violated by both the detective and
18 the deputy D.A. when they requested it raised during
19 the defendant's arraignment. (600,000 to 800,000)

20 Supporting Facts: The defendant scolded the detective
21 during a contact visit in the morning just before his
22 arraignment, telling the officer he would opt for an
23 OR. Bail is raised after the officer and two APW members
24 huddle with the deputy D.A. during the arraignment.
25 (see page 31 lines 96-109.)

26 • Criminal proceedings have been unjustifiably
27 suspended and I've been without assistance of counsel
28 preventing me from raising the above grounds (see page 54)

1 *Claim Seven: The District Attorney has violated my 6th
 2 Amendment right to a speedy trial. (Conspiring with
 3 my court-appointed counsel.) So has the Court.
 4 Supporting Facts: I was arrested on 8/11/07, and
 5 arraigned on 8/14/07. IT IS NOW 4 MONTHS
 6 INTO MY DETENTION AND I'VE YET TO
 7 HAVE A PRELIMINARY HEARING. THEY ARE
 8 CLAIMING I WON'T BE HONORED ONE FOR
 9 AT LEAST ANOTHER 6 MONTHS. That is
 10 10 total "months" instead of the 10 STAT-
 11 UTORY DAYS. (SEE PAGES #26, 40*, 46, 51, 52, 53,
 12 54, 30 lines 11-25) I NEVER WAIVED TIME. I REFUSED!

13 *Claim Eight: The District Attorney violated my
 14 5th Amendment right to Due Process disclosing
 15 prejudicial material to the San Mateo Times and
 16 the Daily Journal which was misleading hearsay.
 17 Supporting Facts: In August and on October 25th
 18 false statements were released to the media
 19 in a defamation attempt. Such material was not
 20 addressed in court but deliberately released,
 21 resulting in slanderous articles. Also released
 22 was the statement that I lived with my parents
 23 which they misinterpreted processing their own
 24 paperwork when I listed them as my dependents.
 25 I lived alone independently! This proves the D.A.'s
 26 disclosing of information offensively. (voluntarily)

27 *Claim Nine: The Court, D.A., and counsel have
 28 violated my rights to Due Process by refusing

1 to disclose a copy of the complaint, the police
2 report, and copies of the Dr. reports.

3 Supporting Facts: I've repeatedly requested
4 the materials from counsel to no avail. I add-
5 ressed the court on 11/16/07 and they still
6 fail to deliver (SEE PAGES 11, 54) They must be concealing
7 fraudulent and slanderous material!

8 * Claim Ten: The District Attorney has violated
9 my 5th and 14th amendment rights to Due Process
10 by fraudulently conspiring to have me sent for
11 a minimum of 180 days of maltreatment in a
12 State Hospital. (with counsel and Dr. Singh)

13 Supporting Facts: I am free from any medication.
14 The second doctor saw me fit for trial. (attachment)

15 * Claim Eleven: The Court, D.A., and counsel have
16 deprived me of liberty and property without Due
17 Process of Law secured by the 5th and 14th Amend-
18 ments.

19 Supporting Facts: I was denied a preliminary
20 hearing and a jury trial. (SEE PAGE 30 lines 10-25)

21 * Claim Twelve: The Court, D.A., and counsel have
22 refused to inform me of the nature and cause
23 of the accusation (in regards to requested material
24 and a preliminary hearing) violating the 6th Amendment.

25 Supporting Facts: I was arrested on 8/11/07. I've
26 NEVER SEEN THE POLICE REPORT, and what
27 I've heard from it was fraudulent, perjured and
28 fabricated. I'VE ASKED REPEATEDLEY.

(or BPR)

1 * Claim Thirteen: The District Attorney violated
 2 the 5th Amendment in their unreasonable and
 3 unexplained delay in charging the defendant.

4 Supporting Facts: Investigation began 6 months
 5 prior to the arrest, yet the fact that APW &
 6 affiliates resumed to harass the defendant
 7 is overlooked. (SEE PAGE 54)

8 * Claim Fourteen: The Burlingame Police Department
 9 violated Due Process under the 5th and 14th amendment
 10 in their entrapment of the defendant.

11 Supporting Facts: They were investigating the
 12 defendant and were either NEGLIGENT OR
 13 KNOWLEDGED OF APW'S HARASSMENT
 14 OF THE DEFENDANT. The latter constitutes entrapment.
 15 (SEE PAGES 27(b)*, 35 •, 5, 54)

16 * Claim Fifteen: The Burlingame Police Department
 17 violated the 14th Amendment Clause of equal
 18 protection by NEGLECTING THE CRIMES
 19 COMMITTED AGAINST THE DEFENDENT.

20 (see attached page # 0, 5, 39, 42)

21 Supporting Facts: This was disclosed publicly
 22 in the textfiles residing on the seized laptop,
 23 posted online, and disclosed in one form or
 24 another to the detective during interview.

25 (see attached 30-34) * NOTE: GIVEN THE UNITY OF
 26 COUNSEL, the D.A., and the Court, this may be
 27 applicable to them as well.

28 • Gross negligence and fraud are evident.

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases: (see attached page #56)

Escobedo v. Illinois 378 us 478, Dickey v. Florida 398 us 30,
Klopfer v. North Carolina 386 us 213, Napue v. Illinois
360 us 264, Chapman ET AL v. California 386 us 18

Do you have an attorney for this petition?

Yes

No

X

If you do, give the name and address of your attorney:

n/a

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on

12/10/07

Date

Marlon E. Pastakhan

Signature of Petitioner

P.S. Attached is a 39 page document numbered 0-56.

It contains information on misconduct by the
Burlingame Police Department, All Pro Wrestling,
the District Attorney, my court appointed
 (Rev. 6/02) counsel, and the court appointed doctors,
resulting in negligence by the court and
my "unconstitutional and illegal detention."

(please pardon me for it's size and any errors in this petition)